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7 **SERGEANT KINNEY**

8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10
11 DARREN "PETE" WHITE

12 Plaintiff,

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14 vs.

15 CITY OF LOS ANGELES; CHIEF
16 CHARLIE BECK, in his official
17 capacity; SERGEANT KINNEY and
and DOES 1 through 10,

18 Defendants.
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CASE NO.: CV17-03306 SJ0-MRWx
(Hon. S. James Otero)

MOTION IN LIMINE NO. 3:

**DEFENDANTS' OPPOSITION TO
PLAINTIFF'S MOTION IN LIMINE ;
TO EXCLUDE EVIDENCE OF
DEFENDANTS' BODY-WORN
CAMERA VIDEO RECORDING**

Trial Date: August 21, 2018
Time: 9:00 a.m.
Courtroom: 10C

23 **TO THIS HONORABLE COURT AND TO PLAINTIFF AND HIS**
24 **ATTORNEYS OF RECORD:**

25 Defendants CITY OF LOS ANGELES, CHIEF CHARLIE BECK, and
26 SERGEANT EDWARD KINNEY hereby oppose Plaintiff's Motion in Limine
27 No. 3 to exclude evidence of Defendants' Body-worn camera video recording.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. FACTS OF THE CASE**

3 On June 14, 2016, Los Angeles Police Department Sergeant Edward
4 Kinney was assigned to the Resources Enhancement Service Enforcement Team
5 (RESET), as the unit Assistant Officer in Charge. The City of Los Angeles, in
6 response to a May 2012 Notice of Violation by the Los Angeles County Health
7 Department and in order to create and maintain a safer, cleaner environment for
8 the general public has tasked the L.A. Sanitation Watershed Protection Division,
9 Environmental Enforcement and Emergency Response Unit with systematic
10 clearing of the Skid Row area. Approximately every two months, for a seven day
11 period, specific streets in the Skid Row area are designated for comprehensive
12 cleaning. In order to accomplish this mission, notices from L.A. Sanitation are
13 posted 48 hours in advance in the scheduled cleaning area. The posted notices
14 inform the homeless population of the sanitation efforts, affording them ample
15 time to remove their belongings, tents, encampments and bulky items, prior to the
16 street closures. Entities from the Watershed and Clean Harbors utilize power
17 washers and chemicals to accomplish the cleaning, to rid the area of harmful
18 infectious materials and biohazardous waste that accumulates in the streets and
19 sidewalks due to the overwhelming homeless population. Also, to provide
20 protection to the city and contract workers from interference and physical assault,
21 as they do their jobs.

22 RESET units were assigned to help facilitate the street closures, along with
23 two units from Department of Transportation, to ensure there was no traffic on the
24 road and no pedestrian traffic on the sidewalks. The hard closure was posted for
25 6th Street from Wall to Gladys. The street closure was complete with posted
26 officers and yellow tape (Los Angeles Police Department Police Line Do Not
27 Cross) was strung on 6th Street from Wall to Julian. No vehicle or pedestrian
28 traffic was allowed to flow eastbound and all vehicle and pedestrian traffic was

1 disallowed through the intersection at San Julian. Due to the chemicals utilized in
2 the cleaning and the health hazards such as needles, sharps and biohazardous
3 materials and human feces that remain after the homeless persons in the area
4 depart the location, citizens are not permitted to be present during the cleaning.

5 At 6:15 a.m., officers issued warnings to the transients in the area along 6th
6 Street, advising them of the imminent closure. The hard closure began at 8:00 am.
7 The City vehicles, dump trucks and equipment utilized by Street Services were
8 pulling onto the street in preparation for the clean up. An individual refused to
9 remove his make-shift lodging from the sidewalk designated for cleaning. The
10 individual refused to exit his lodging and comply with officers in violation of
11 41.18(a)(1) LAMC, resisting/obstructing officers. After 6th Street and the Sn
12 Julian intersection were blocked off and the Police Line tape were affixed to block
13 pedestrian traffic, a field supervisor and several units were redeployed from the
14 mission, to affect the arrest of this individual. A tactical plan was formulated to
15 the arrest of the individual who refused to leave his make-shift lodging. His
16 lodging was located on the south curb, mid-block between San Julian and Wall.

17 At approximately 8:20 a.m., Sergeant Kinney observed Darren "Pete"
18 White, cross over the Police Line Tape and pass the crosswalk into the
19 intersection at 6th and San Julian.

20 White was ordered to get back behind the yellow tape before officers
21 responded with units to deal with the individual who would not leave his make-
22 shift shelter. Sergeant Kinney advised White that he would be arrested if he did
23 not comply.

24 After the delay and distraction caused by White, Sergeant Ramirez and
25 several designated officers responded to the lodging of the individual who refused
26 to leave. After continuing to comply, the individual was placed under arrest after
27 a short standoff, resulting in a use of force due to him resisting arrest. He was
28 then arrested.

1 Suspect White was observed a third and fourth time, walking out into the
2 street, across the yellow tape to film the arrest of the homeless man who refused to
3 leave his make-shift shelter. Other persons observing White's disregard of the
4 yellow tape, began crossing the street. This created a potentially dangerous
5 situation for the officers and the public by diverting and delaying the police efforts
6 to apprehend and arrest the man who refused to leave his tent on the sidewalk.

7 Once that man on the sidewalk was taken into custody and while Sergeant
8 Ramirez and the officers were still in the process of controlling the scene,
9 Sergeant Kinney walked over to San Julian and warned the two individuals who
10 had crossed back behind the yellow tape, telling them that if they crossed again
11 they would be arrested. Sergeant Kinney advised these two persons that they were
12 free to film whatever they wished, but they could not cross the Police Line.

13 Sergeant Kinney had given White multiple warnings, including several
14 given from a distance, while attempting to deal with the homeless individual who
15 refused to leave his tent. Officer attention was diverted multiple times due to
16 White's actions, delaying officer efforts to deal with an uncooperative suspect in a
17 tent who refused to exit. Sergeant Kinney observed White pushing thru the
18 yellow tape, stretching it approximately eight feet into the intersection, defeating
19 the purpose of the tape. Due to all of White's actions, Sergeant Kinney walked
20 over to White and asked him for his identification. Kinney advised White that he
21 was going to be placed under arrest. Kinney walked back to the area where the
22 man in the tent was being arrested, and once that scene was under control, he
23 directed officers to arrest White under arrest for 148(a)(1) Penal Code, for
24 obstructing and delaying officers during the course of their duties.

25 White, however, contends that he was arrested for exercising his First
26 Amendment rights because he was filming the police.

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1 **II. PLAINTIFF’S FAILURE TO PROCURE THE BODY WORN VIDEO**
 2 **FROM DEFENDANTS IS PLAINTIFF’S OWN DOING – BECAUSE**
 3 **PLAINTIFF REFUSED TO ENTER INTO A STANDARD**
 4 **PROTECTIVE ORDER**

5 During discovery Plaintiff requested the body worn videos of officer
 6 involved in Pete White’s arrest, and in-car video of the incident, as well as the
 7 Internal Affairs Report. Defendants responded, as they have responded in all of
 8 their cases involving police video-tape, that once the parties entered into a
 9 Protective Order, the video tape would be produced and the Internal Affairs report
 10 would be produced. Plaintiff, however refused to enter into a Protective Order,
 11 despite the fact that this is defendants’ standard operating procedure, because the
 12 videotape is privileged and involves privacy rights. Plaintiff’s counsel, over the
 13 years, has willingly entered into multiple such Stipulated Protective Orders, but
 14 this time she refused, contending that the Police Commission had ordered that all
 15 body cam videos and in car videos now were to be released to the public. Plaintiff
 16 is wrong.

17 **III. THE VIDEO TAPE SOUGHT BY PLAINTIFF IS NOT A “CRITICAL**
 18 **INCIDENT” AND WAS NOT APPROVED FOR RELEASE BY THE**
 19 **POLICE COMMISSION**

20 In reality, LAPD’s Administrative Order No. 6, Issued April 13, 2018,
 21 and *approved by the Police Commission* who presides over LAPD, provides for
 22 release of video evidence of “*Critical Incidents*”. A *Critical Incident* is defined
 23 as the following: (1) an office involved shooting; (2) a use of force resulting in
 24 death or serious bodily injury requiring hospitalization; (3) deaths of an arrestee
 25 while in police custody; or (4) any other police encounter where the Commission
 26 or the Chief of Police determines release of the video is in the public’s interest.

27 The police video tapes of Pete White are none of the above.

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1 **IV. PLAINTIFF RETALIATED AGAINST DEFENDANTS BY**
 2 **REFUSING TO PRODUCE VIDEOTAPE OF ITS OWN TO**
 3 **DEFENDANTS DURING THE COURSE OF DISCOVERY**

4 Plaintiff, unwilling to enter into a Protective Order, then refused to produce
 5 Plaintiff's own multiple videotapes, even though in discovery responses served
 6 on Defendants, Plaintiff had promised to do so. Essentially, Plaintiff retaliated
 7 against Defendants. This prejudiced Defendants greatly because at that point in
 8 time it was too late to bring a discovery motion. As a result, defendants took the
 9 deposition of Pete White without ever having had the benefit of viewing
 10 Plaintiff's videos. This was unfair, retaliatory gamesmanship, given that
 11 Plaintiff's attorney signed her name on Plaintiff's responses to the City,
 12 *promising* as an officer of the Court that the City would be provided with the
 13 videos. This was in effect a violation of FRCP 11. Just a few days ago Plaintiff
 14 mailed the videotapes to the City, but trial counsel for defendants has not had
 15 time to review the videotapes yet.

16 **V. CONCLUSION**

17 Plaintiff's counsel has misstated the Police Commission Policy regarding
 18 release of videotape footage, has made promises she has not kept in violation of
 19 FRCP 11, and has retaliated against Defendants because she couldn't get her way.
 20 Defendants may play their video at trial, as impeachment.

21 Dated: July 30, 2018

22 Respectfully submitted,

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 24 **THOMAS H. PETERS**, Chief Assistant City Attorney
CORY M. BRENT, Supervising Assist. City Attorney

25 By: /s/ Elizabeth T. Fitzgerald
 26 **ELIZABETH T. FITZGERALD**,
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27 *Attorneys for Defendant* **CITY OF LOS ANGELES,**
 28 **CHIEF CHARLIE BECK and SERGEANT EDWARD KINNEY**

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